

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS
CIVIL ACTION NO. 07-CV-12335-DPW**

TRUE RELIGION APPAREL, INC.
and
GURU DENIM, INC.
Plaintiffs

vs.

TRUE APPAREL COMPANY
Defendant

**OPPOSITION OF TRUE APPAREL COMPANY
TO
PLAINTIFFS' MOTION FOR ORDER PRECLUDING EXPERT TESTIMONY BY J.
ROMNEY EVANS**

The plaintiffs filed a Motion for Order Precluding Expert Testimony by J. Romney Evans on December 4, 2008. (Doc. #67) They argued that the failure of True Religion Apparel Inc. to file an expert's report under Fed.R.Civ.P. Rule 26(a)(2) precluded the ability of J. Romney Evans to provide "expert" testimony under Fed.R.Evid. Rule 702. (Motion, page 2)

DISCUSSION:

The plaintiffs conflated the disclosure requirements of Fed.R.Civ.P. Rule 26(a)(2) relating to certain experts employed to give expert testimony with the standards for determining the admissibility of "expert" testimony under Fed.R.Evid. Rules 702, 703 and 705.

The obligation to provide an "expert's report" is established under Fed.R.Civ.P. Rule 26(a)(2). However, the obligation to provide such a report only applies to a "... witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony" Fed.R.Civ.P. Rule

26(a)(2)(B). It is undisputed that: 1.) J. Romney Evans is a co-founder and CEO of True Apparel Company – the defendant in this case; 2.) there is no evidence that J. Romney Evans has been retained or specially employed to provide expert testimony in the case; and 3.) there is no evidence that J. Romney Evans is regularly involved in giving expert testimony in this capacity as CEO of True Apparel Company. It follows that the failure of the defendant to file an “expert’s report” for J. Romney Evans does not preclude J. Romney Evans from providing testimony based upon his expertise within the scope of Rule 702 of the Federal Rules of Evidence

TRUE APPAREL COMPANY

By its Attorney:

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Dated: December 8, 2008

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on December 8, 2008

/s/ Robert S. Wolfe
Robert S. Wolfe